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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNULFO TRINIDAD RUIZ,

Defendant and Appellant.

B289164

(Los Angeles County
Super. Ct. No. LA057808)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard J. Kirschner, Judge. Dismissed.

Eddie Tolmas for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Kristen J. Inberg, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2009, appellant pled nolo contendere to a violation of Penal Code section 288(a), committing a lewd act on a minor under the age of 14.¹ He was thereafter sentenced to five years' probation and required to register as a sexual offender.

In October 2017, appellant filed a petition for "Writ of Coram Nobis," seeking to vacate his plea.² Appellant claimed that he spoke limited English, that he was never informed of his right to remain silent or to have an attorney present when interviewed by police officers, and that the privately retained attorney who represented him made no attempt to suppress his statement to the officers. Appellant retained another attorney, Symour Amster, to represent him during the plea negotiation. Appellant claimed that Amster "minimally" informed him of the registration requirement, but that no one informed him of the full "meaning and

¹ Undesignated statutory references are to the Penal Code. The facts underlying appellant's conviction are omitted as they are irrelevant to the issues on appeal. (See *People v. White* (1997) 55 Cal.App.4th 914, 916, fn. 2 [statement of facts omitted because appeal did not raise any issues regarding the facts of the underlying offense].)

² Appellant also sought to have the plea withdrawn under section 1018, which authorizes a trial court to allow a defendant to withdraw a guilty or nolo contendere plea "'for good cause shown,'" but only before judgment is entered or within six months after an order of probation is made if entry of judgment is suspended. (See *People v. Ramirez* (2006) 141 Cal.App.4th 1501, 1506; *People v. Gari* (2011) 199 Cal.App.4th 510, 521-522.) Appellant raises no issues pertinent to section 1018 on appeal.

ramifications.” Appellant also claimed that the attorney who stood in for Amster at the sentencing hearing was “ill-prepared” and should have sought a continuance.³

On March 13, 2018, the court denied the petition. At the hearing, the court explained that ineffective assistance of counsel is not a valid basis for *coram nobis* relief. The court also reviewed the record and noted that appellant had been advised multiple times that the plea would require registration as a sexual offender for the rest of his life. Appellant noticed an appeal.⁴

³ The attorney asked that appellant be excused from the condition of registering as a sexual offender, claiming appellant was unaware that this was a condition of the plea agreement. The court denied the request, stating that appellant had been fully informed that registering as a sexual offender was part of the agreement, but offered to allow appellant to withdraw his plea. Counsel asked for a recess to confer with Amster, and after the recess, stated that although they had been unable to contact Amster, appellant wanted to go forward with sentencing. The court again stated that appellant could withdraw his plea. Counsel reiterated that appellant “wished to go forward with the sentencing, knowing that he is going to have to register.” The court spoke to appellant directly, asking if he wished to withdraw his plea with the understanding that his sentence would require him to register as a sexual offender for life. Appellant said he wished to proceed.

⁴ In February 2018, appellant asked the judge assigned to hear the petition, the same judge who had presided over appellant’s plea and sentencing, to recuse himself, citing Code of Civil Procedure section 170.6 and no other statutory provision. On March 1, 2018, the court denied the challenge as untimely. Appellant contends in his opening brief, that “the judge . . . should have, without request,” recused himself. Appellant cites no authority for this proposition. Where an appellant raises a point but fails to affirmatively demonstrate error through reasoned argument and citations (*Fn. is continued on the next page.*)

DISCUSSION

Once judgment has been entered and the period for a statutory motion to withdraw a plea of guilty or nolo contendere has expired (see § 1018), a defendant may file a petition for writ of error *coram nobis*, which is regarded as equivalent to a motion to vacate the judgment. (*People v. Gari*, *supra*, 199 Cal.App.4th at pp. 521-522; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 982.) The grounds on which a litigant may obtain relief via a writ of error *coram nobis* are narrow: “[T]he writ’s purpose ‘is to secure relief, where no other remedy exists, from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court.’” (*People v. Kim* (2009) 45 Cal.4th 1078, 1091; see *id.* at p. 1102 “[F]acts that have justified issuance of the writ in the past have included a litigant’s insanity or minority, that the litigant had never been properly served,

to authority and the record, we treat the point as forfeited. (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) In any event, “[a]n order denying a motion to disqualify a judge is ‘not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court’s order determining the question of disqualification.’” (*People v. Peoples* (2016) 62 Cal.4th 718, 786, quoting Code Civ. Proc., § 170.3, subd. (d).) Appellant did not seek timely writ review of the court’s March 2018 order.

and that a defendant's plea was procured through extrinsic fraud or mob violence."].) The remedy does not apply where the mistake was one of law. (*Id.* at p. 1093.) In *People v. Kim*, the Supreme Court held that a claim of ineffective assistance of counsel relates "more to a mistake of law than of fact" and presents "an inappropriate ground for relief on *coram nobis*." (*Id.* at p. 1104; see *People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1148 ["[B]inding precedent holds that constitutional violations, such as violations of a defendant's right to effective assistance of counsel, are not properly presented in a petition for writ of error *coram nobis*."]; *People v. Gallardo, supra*, at p. 982-983 ["*Coram nobis* will not issue to vacate a plea of guilty solely on the ground that it was induced by misstatements of counsel [citation] or where the claim is that the defendant did not receive effective assistance from counsel [citations]."]].)

"In an appeal from a trial court's denial of an application for the writ of error *coram nobis*, a reviewing court initially determines whether defendant has made a prima facie showing of merit; if not, the court may summarily dismiss the appeal." (*People v. Totari* (2002) 28 Cal.4th 876, 885, fn. 4.) To state a prima facie case, the petitioner must show: ""(1) that some fact existed which, without his fault or negligence, was not represented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know nor could he have, with due

diligence, discovered the facts upon which he relies any sooner than the point at which he petitions for the writ. [Citations.]” [Citations.]” (*People v. Dubon* (2001) 90 Cal.App.4th 944, 950-951, quoting *People v. Ibanez* (1999) 76 Cal.App.4th 537, 544.)

Appellant’s petition was based on ineffective assistance of counsel. He claimed that his original attorney failed to seek to suppress his statement to police officers, that his second attorney failed to inform him of the ramifications of pleading nolo contendere to the charge and registering as a sexual offender, and that the attorney who stood in on the day of his sentencing hearing was unprepared. He did not suggest that any fact existed that would have prevented the rendition of judgment. Because appellant failed to make a prima facie showing of merit, the appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.